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IN THE SUPREME COURT OF THE STATE OF IDAHO

JAYO DEVELOPMENT, INC.)

Petitioner-Appellant,)

ADA COUNTY BOARD OF)
EQUALIZATION,)

Respondent.)
_____)

SUPREME COURT NO. 41668

Fourth Dist. Case NO. CV OC 2013-7673

APPELLANT'S BRIEF

Appeal from the District Court of the Fourth Judicial District
for the County of Ada

Honorable Eric J. Wildman, District Judge, Presiding

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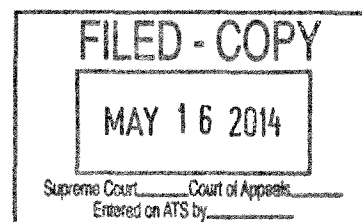
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Petitioner-Appellant,)	SUPREME COURT NO. 41668
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I.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This appeal arises from Ada County's denial of a "site improvement" property tax exemption to the Appellant Jayo Development, Inc., on 41 separate parcels of residential development property. The basis for this denial was that the Appellant, Jayo Development, Inc., did not make the "site improvements" on those individual parcels, which instead had been made by a predecessor entity, Jayo Construction, Inc., that later transferred each of those parcels to Jayo Development, Inc. Both Jayo Construction, Inc. and Jayo Development, Inc. had the same principal owner, Douglas Jayo. The site improvement property tax exemption was first enacted by the 2012 Idaho Legislature. A 2013 clarifying amendment provided that any "transfer," for which the same principal owner maintained a 50% interest in the transferred property, did not constitute a disqualifying conveyance for which the site improvement property tax exemption would be lost.

B. COURSE OF PROCEEDINGS BELOW

The Appellant, Jayo Development, Inc. timely filed site improvement tax exemption applications with respect to each of the 41 parcels with the Ada County Assessor for the 2012 tax year on April 19, 2012 (Administrative Record).

On May 24, 2012, the Ada County Assessor issued his Notice of Exemption Denial, which denied the Appellant Jayo Development, Inc.'s site improvement exemption applications for each of these 41 parcels.

On June 20, 2012 Jayo Development appealed to the Ada County Board of Equalization, which held a hearing on July 9, 2012 and then denied the appeal on July 9, 2012. A subsequent appeal to the Idaho Board of Tax Appeals was filed on July 24, 2012 which Appeal was also denied by the Board of Tax Appeals Order dated April 4, 2013. (Administrative Record)

On April 30, 2013 the Appellant filed a Petition for Judicial Review before the District Court. On July 24, 2013, the Respondent Ada County filed a motion for summary judgment with supporting memorandum. The Appellant Jayo Development, Inc. filed its own motion for summary judgment with supporting memorandum on July 31, 2013. After response and reply briefing, oral argument was held before the district court on August 28, 2013. The district court issued its decision granting summary judgment to Ada County on September 11, 2013 upholding the denial of the exemptions to Jayo Development, Inc. (R., 124-135), with a Judgment entered that same date (R., pp. 136-137).

Jayo Development, Inc. moved for reconsideration on September 27, 2013 (R., pp. 138-39), with a supporting memorandum filed on October 8, 2013 (R., pp. 140-156). Ada County filed its memorandum in opposition to the Jayo Development, Inc.'s motion for reconsideration on October 17, 2013 (R., 157-168), to which Jayo Development, Inc. filed a notice waiving reply on October 22, 2013 (R., pp. 169-170). The district court entered its order denying Jayo

Development, Inc.’s motion for reconsideration on October 31, 2013 (R., pp. 171-77).

Jayo Development, Inc.’s timely Notice of Appeal was filed on December 6, 2013 on this appeal (R., pp. 178-182).

C. STATEMENT OF FACTS

In the proceedings below the parties entered into a stipulated statement of facts. (R., pp. 15-21). The following narrative statement of facts is derived from, and cites to, that stipulated statement of facts, as incorporated into the record on this appeal.

At the outset, the distinction should clearly be made that Doug Jayo was, and is, the principal member/owner of the three separate legal entities that are involved in this matter which existed at the following times:

- | | |
|---|--|
| (1) <u>Jayo Construction, Inc.</u> | Formed on November 14, 1979 and dissolved on December 26, 2008. |
| (2) <u>Jayo Construction, LLC</u> | Formed on December 28, 2008 and dissolved on February 12, 2010. |
| (3) <u>Jayo Development, Inc.</u> | Formed on February 1, 2010, currently in existence, and is the Appellant on this appeal. |

(R., pg. 17, Stipulated Facts, ¶¶ 11-14; R., pg. 125, Order on Summary Judgment, ¶ 6 (“Douglas Jayo, who is the sole shareholder of the Petitioner, was also the sole shareholder of Jayo Construction, Inc. at the time the site improvements were made.”)).

Jayo Construction, Inc. was the original owner of each of the 41 parcels for which the site

improvement tax exemption is at issue on this appeal, and completed those site improvements on or before December 26, 2008. (R., pg. 17, Stipulated Facts, ¶ 8). A complete list of these 41 individual parcels, as identified within the seven different Ada County subdivisions where they are located, is provided in the record on this appeal, at pp. 8-9.

Through a series of transactions that are described in specific detail in subparts “a” through “s” of paragraph 16 of the stipulated facts that were submitted below (R., pp. 18-20), each of these parcels was transferred from Jayo Construction, Inc. through Jayo Construction, LLC, and Doug Jayo, individually, acting as intermediaries, to the eventual ownership by Jayo Development, Inc.¹ Other than its role as an intermediary in these several transactions, the entity, Jayo Construction, LLC, plays no further role in the issues that have been raised on this appeal.

The determinative fact, as arising from this series of just-described transfers, in respect to the decisions made below which denied the site improvement property tax exemption to the Appellant Jayo Development, Inc.’s was that it was its predecessor, Jayo Construction, Inc., that had actually made the site improvements on each of these 41 parcels, and that it was the transfers of those properties between the entities that disqualified Jayo Development, Inc. under the statute, I.C. § 63-602W(4), and the implementing administrative rule, IDAHO ADMINISTRATIVE

¹ Since the time this appeal was first initiated, a number of the parcels have been sold in the course of the normal development process. Nonetheless, Jayo Development’s right to the site development tax exemption under I.C. § 63-602W(4) for tax year 2012 has not been rendered moot by any of these subsequent sales.

CODE R. 35.01.03 620 (2012) (“Rule 620”) from entitlement to the tax exemption.

The initial basis for this denial was the “conveyance” language found in the Idaho Legislature’s 2012 enactment of I.C. § 63-602W(4), which had first created the site improvement tax exemption that is at issue on this appeal. *See*, 2012 Ida.Sess.L., Ch. 192, pp. 517-518, (retroactive in its effect to January 1, 2012) (R., pp. 48-51). As first enacted this exemption simply stated:

63-602W. Business inventory exempt from taxation – Business inventory that is a component of real property that is a single family dwelling. – The following property is exempt from property taxation: business inventory. For the purpose of this section, “business inventory” means all items of tangible personal property or other property described as:

...

(4) Site improvements, that are associated with land, such as roads and utilities, on real property **held by the land developer for sale or consumption in the ordinary course of the land developer’s business** until other improvements, such as buildings or structural components of buildings, are begun **or title to the land is conveyed from the land developer**.

(Emphasis added).

The Idaho Legislature immediately clarified the “conveyance” language of I.C. § 63-602W(4) in the immediately following 2013 session of the Idaho Legislature. In the place of the 2012 phrase, as highlighted above, **“or title to the land is conveyed from the land developer,”** the 2013 legislature substituted in its place the following statutory language:

the real property is conveyed to a third party.

The legislature then added further clarifying language explaining what constituted a conveyance

to a third party:

For purposes of this subsection, a transfer of title to real property to a legal entity of which at least fifty percent (50%) is owned by the land developer, the land developer's original entity or the same principals who owned the land developer's original entity shall not be considered a conveyance to a third party.

See, Chapter 276 of the Laws of 2013, § 1 at pg. 715 (emphasis added) (R., pp. 53-55).

As a result of the enactment of the 2013 “clarifying amendments” to I.C. § 63-602W the Idaho State Tax Commission allowed Temporary Rule 620 to expire, which had been promulgated to implement that tax exemption. *See*, Statement of Purpose to H.B. 242, Sixty-Second Idaho Legislature, First Session (2013) (R., pg. 59).

D. STANDARD OF REVIEW

The district court granted summary judgment for the Ada County Board of Equalization, such that the proper standard of review is that employed for reviewing an appeal from an order of summary judgment. *Ada County Board of Equalization v. Highlands, Inc.*, 141 Idaho 202, 205-06, 108 P.3d 349, 352-53 (2005). Where, as here, the question primarily involves the application of a statute, the appellate court exercises free review. *Id*

Statutory interpretation begins with the literal words of the statute, giving the language its plain, obvious and rational meaning. *International Ass'n of Firefighters, Loc. No. 672 v. City of Boise City*, 136 Idaho 162, 169-170, 30 P.3d 940, 947-48 (2001). Where a statute is clear, the court must follow the law as written and consequently there is no occasion for application for

rules of construction. *Sweeney v. Otter*, 119 Idaho 135, 138-39, 804 P.2d 308, 311-12 (1990). A statute is ambiguous where the language is capable of more than one reasonable construction. *Porter v. Bd. of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004). When a statute is found to be ambiguous, then the Court should consider not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history in order to discern and implement the intent of the legislature. *Gonzalez v. Thacker*, 148 Idaho 879, 881, 231 P.3d 524, 526 (2009). When the legislature has acted to clarify ambiguous language in a statute, then that clarifying language should be consulted by the court to determine the legislature's original intent in enacting the statute. *State v. Reed*, 154 Idaho 120, 123, 294 P.3d 1132, 1135 (2012) (and cases cited therein).

Statutes granting tax exemptions are strictly construed against the taxpayer and in favor of the State. *Housing Southwest, Inc. v. Washington County*, 128 Idaho 335, 337-38, 913 P.2d 68, 70-71 (1996). Although Tax exemptions are narrowly construed, they follow the "strict but reasonable" rule of statutory construction. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 416, 849 P.2d 83, 89 (1993). A taxpayer must show a clear entitlement to an exemption, as an exemption will never be presumed. *Housing Southwest, Inc. v. Washington County*, 128 Idaho at 338, 913 P.2d at 71. In examining the "production" tax exemption in I.C. § 63-3622(d) in *Idaho State Tax Comm'n v. Haener Bros., Inc.*, 121 Idaho 741, 743, 828 P.2d 304, 306 (1992), the Court discussed the role legislative intent plays in ascertaining the meaning of a statute, stating that "[s]tatutes are to be

construed to give effect to the intent of the legislature. The literal wording of the statute is important, however, other sources should also be considered in determining legislative intent.” *Id.* (internal citations omitted). The Court noted that the “overall scheme and intent of the legislation must not be overlooked.” *Id.* at 744, 828 P.2d at 308.

II.

ISSUES PRESENTED ON APPEAL

1. Whether Jayo Development, Inc. qualified for the “site improvement” property tax exemption, as based upon the unambiguous language of I.C. § 63-602W(4)?
2. Whether the district court in aid of statutory interpretation I.C. § 63-602W(4) impermissibly relied upon “implied” language, (“the land developer who made the site improvements”), that neither appears on the face of the statute itself, nor finds any textual support in any other part of that law?
3. Whether the 2013 clarification amendment should be applied to determine that a disqualifying conveyance of property was never intended to occur under the original 2012 enactment of the site improvement exemption statute as applied to the facts of this case?
4. If Jayo Development Prevails On This Appeal Whether It Is Entitled To An Award Of Attorney Fees Under I.C. § 12-117(1)?

III.

ARGUMENT

A. **Jayo Development, Inc. Was A Qualified “Land Developer,” That Was Entitled To The “Site Improvement” Property Tax Exemption, As Adopted in 2012, Based Upon The Unambiguous Language of I.C. § 63-602W(4)**

Subsection (4) of I.C. § 63-602W, as originally enacted in 2012, Chapter 192 of the Laws of 2012, pp. 517-518, and made retroactive in its effect to January 1, 2012, simply declared as follows:

63-602W. Business inventory exempt from taxation – Business inventory that is a component of real property that is a single family dwelling. – The following property is exempt from property taxation: business inventory. For the purpose of this section, “business inventory” means all items of tangible personal property or other property described as:

...

(4) Site improvements, that are associated with land, such as roads and utilities, on real property **held by the land developer for sale or consumption in the ordinary course of the land developer’s business** until other improvements, such as buildings or structural components of buildings, are begun **or title to the land is conveyed from the land developer.**

(Emphasis added).

Subsection (4), as originally enacted in 2012, was entirely silent in respect to: (1) the identity of the entity or person who had actually constructed or installed the site improvements, and that was entitled to claim the exemption, and as to, (2) any time requirement concerning when those site improvements had been installed, in order to qualify for this site improvements property tax exemption. It is undisputed in this case that the site improvements at issue had been

installed prior to the enactment of this exemption in 2012, and that the Appellant, Jayo Development, Inc. was in fact the owner of those site improvements, by virtue of its ownership of the 41 residential development lots at issue, at the time this exemption was first enacted in 2012.

The only requirement imposed on the face of subsection (4) at the time it was first enacted in 2012 was that the site improvements for which an exemption was claimed were “**held by** the land developer for sale or consumption in the ordinary course of the land developer’s business” (emphasis added). Indisputably, the site improvements for which the exemption was claimed in 2012 were in fact held by Jayo Development, Inc., as the “land developer” for sale or consumption in the ordinary course of Jayo’s business at the time it made its claim to that tax exemption.

Significant to the issues raised on this appeal, there is no language on the face of subsection (4), as enacted in 2012, that supports any requirement that the land developer that is claiming the exemption either “constructed” or “installed” those site improvements for which the exemption is being claimed. Instead, the statute only declares that those “site improvements” must be, at the time the claim for exemption is made, “**held by** the land developer for sale or consumption in the ordinary course of the land developer’s business” (emphasis added). Once a land developer has qualified for the site improvements property tax exemption, there are then two triggering events by which that exemption can then terminate: (1) once the building of the structural components of the project begins; or (2) the land is conveyed from the land

developer.

In this case, as based in part upon grammatical construction of the statute, the district court held that the statute could only be construed to apply to the original land developer who had constructed or made the site improvements, and that because a predecessor entity, Jayo Construction, Inc. – not Jayo Development, Inc. – had made those improvements, on those 41 parcels which had been transferred to Jayo Development by Jayo Construction, that Jayo Development was not entitled to the site improvement tax exemption. (R., pp. 128-130).

A court's reliance upon the grammatical construction of the statute certainly represents one accepted means of statutory construction. *Ada County Prosecuting Attorney v. 2007 Legendary Motorcycle*, 154 Idaho 351, 354, 298 P.3d 245, 248 (2013). At pages 6 and 11 of the district court's decision (R., pp. 129 & 134) that court states that the Idaho Legislature's apparent intentional use of the definite article "the" in drafting I.C. § 63-602W(4) for purposes of modifying the phrase, "land developer," was indicative of the legislature's intent to limit the site improvement property tax exemption to only, "the land developer that makes [who made] the site improvements." (R., pg. 129). The district court points out that if the legislature had instead used the indefinite article, "a" in modifying "land developer," then the legislature's manifested intent would have been to extend that exemption "to all land developers holding property improved with site improvements, irrespective of whether that developer made the site improvements," *See*, Order On Motions for Summary Judgment, at pg. 6 (R., pg. 129).

The problem that seems apparent in relying upon this rule of grammatical construction in

support of the district court's conclusion in this case is that it necessarily requires reliance for its conclusion upon implied language that simply does not appear on the face of the statute – “**the land developer who made the site improvements.**” The district court did not point to any statutory definition of “the land developer,” that supported its construction of this phrase as being limited to only those individuals or entities who actually made the site improvements, nor is there any evident legislative history that the legislature had this particular distinction in mind when it adopted this site improvement exemption in 2012. In the absence of this support, the grammatical construction within this statute of the phrase, “held by the land developer for sale or consumption in the ordinary course of the land developer's business,” could be just as easily construed to mean “the” land developer who “held” that site improvement at the time the exemption is applied for, regardless of whether that improvement was acquired by direct investment, or by direct transfer. In either situation, the district court's bottom-line rationale is satisfied, to the extent that, “It is practical to interpret the statute as granting the exemption to the land developer that invests the necessary capital to make the site improvements.” *See*, Order on Motions for Summary Judgment at pg. 8. (R., pg. 131).

Ultimately, what seems to have gotten lost within this technical analysis of this statute is that the land developers who were in fact the likely intended beneficiaries of this site improvement tax exemption, were those who somehow survived the worst housing downturn within anyone's memory. That survival was not without loss or sacrifice. Partners, investors, and sometimes entire businesses were lost. A lot of development land held as “inventory” was

foreclosed upon and lost. Business entities changed, both voluntarily and involuntarily. In this case, as is likely in many others, “the developer” who invested the capital to make the site improvements, and who hung on, was Doug Jayo, both as Jayo Construction, Inc., and as Jayo Development, Inc. *See*, district court’s Statement of Facts, ¶ 6, at pg. 2. (R., pg. 125); (Senator Lacey, “and part of the reason for the bill was the down economy. He said he’s familiar with how much money is put in the ground that can’t be seen until it is sold. He said this bill is for a developer who transfer property to an LLC that the developer owns.” (R., pg. 64)).

While it is acknowledged that a grammatical distinction does in fact exist between the definitive article “the,” as referring to a specific or identifiable subject, and the indefinite article “a,” as referring to any member of a particular class, the district court’s application of that rule to reach the conclusion that “the land developer” in the context of I.C. § 63-602W(4), as adopted in 2012 can only mean, “the land developer who made the site improvements,” does not appear to be at all supported by the context of the statute, the supporting legislative history, or even more significantly, the subsequent clarifying amendment adopted in 2013, in which the legislature did declare its intention. The district court could only reach that particular conclusion by adding that particular language to the statute by implication. As a general rule, courts should not imply language in a statute that does not appear there. *See*, 2A Singer & Singer, Sutherland Statutory Construction, § 47:38 *Insertion of words*. A court does not have the power to construe an unambiguous statute to say something that it does not say. *Verska v. St. Alphonsus Regional Med. Ctr.*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011). The power to change a statute is

legislative and belongs only to the state legislature. *Idaho State Board of Accountancy v. League Services, Inc.*, 108 Idaho 157, 159, 697 P.2d 1171, 1173 (1985); and *Ingard v. Barker*, 27 Idaho 124, 135, 147 P. 293, 296 (1915) (“It would be clearly beyond the right of this court to make judicial amendments to the statute in question by adding words thereto.”).

In applying only the unambiguous language of the statute itself, Jayo Development, Inc. was in fact “the land developer” who held the qualifying real property at the time the § 63-602W(4) site improvement tax exemption was enacted in 2012. Ada County’s only stated objection to Jayo Development’s claim to the site improvement tax exemption were the alleged disqualifying transfers between Jayo Construction, Inc. and Jayo Development, Inc., which had occurred well before the statute was enacted in 2012. (R., pg. 26) Once those objections were eliminated by the 2013 clarifying amendments there was no reason why Jayo Development was not otherwise qualified and entitled to claim that tax exemption for tax year 2012.

In sum, under a plain reading of the 2012 statute, Jayo Development was entitled to the site improvement tax exemption.

B. The Idaho Legislature’s Enactment Of The 2013 “Clarification” Amendments To I.C. § 63-602W(4), When Considered In Conjunction With The Tax Commission’s “Abandonment” Of Rule 620, Established Jayo Development, Inc.’s Right To The 2012 Site Improvement Property Tax Exemption

The district court rejected Jayo Development, Inc.’s argument that the 2013 amendment to I.C. § 63-602W(4) had clarified when a disqualifying conveyance of property was intended to occur under the original 2012 enactment of the site improvement exemption statute, (R., pp. 133-

34), and Jayo Development's argument that it was therefore entitled to the 2012 exemption as a result of that 2013 clarification amendment.

The general rule in respect to amendatory acts of the legislature is that amendments of existing statutes are presumed to change the law. 1A Sutherland Statutory Construction § 22:30 *Construction of amendatory acts – Presumption of Change*. In contrast, if an amendment is only intended to “clarify” an existing statute, then no change is intended, but instead that clarification is intended to state how that law was intended to operate from its original enactment. 1A Sutherland Statutory Construction § 22:31 *Construction of amendatory acts – Defects in original act*.

In this instance, the evidence supports that the 2013 amendments to I.C. § 63-602W(4) were intended to clarify how that statute was to operate and be interpreted from its original enactment in 2012. The Statement of Purpose which accompanied the enactment of the 2013 amendment expressly declared that, “Section 63-602W(4) is being amended to provide clarification in determining eligibility for this exemption by defining land developer,” (R., pg. 59).

A review of both the House Revenue & Taxation Committee Minutes and the Senate Local Government & Taxation Committee Minutes, the relevant portions of which were attached to the Affidavit of Michael R. Jones, as submitted below, (R., pp. 62-68; 70-73), reveals that the intent behind the enactment of the 2013 amendments to I.C. § 63-602W(4) was to clarify the operation of the original 2012 site improvements property tax exemption. (*See e.g.*,

Representative Hartgen, “Clarification as to how the land is titled and that a transfer of title within the same ownership group would ‘not’ constitute a transfer for purposes of sale, and thereby is ‘not’ taxed at a higher rate;” (R., pg. 63); Chairman Siddoway, “He said there needs to be clarification of the statute,” (R., pg. 66); “Mr. Miller responded to a question, saying it is his belief H 242 does not provide a new exemption but clarifies how the current exemption should work.” (R., pg. 72)).

When the legislature has acted to clarify ambiguous language in a statute, then that clarifying language should be consulted by the Court to determine the legislature’s original intent in enacting the original statute. *State v. Reed*, 154 Idaho 120, 123, 294 P.3d 1132, 1135 (2012) (and cases cited therein). As a result of those 2013 amendments, the Idaho Legislature clarified the “conveyance” language of I.C. § 63-602W(4). The 2013 legislature replaced the phrase, “or title to the land is conveyed from the land developer,” with, “the real property is conveyed to a third party.” Then, the legislature added further clarifying language explaining what constituted a conveyance to a third party:

For purposes of this subsection, a transfer of title to real property to a legal entity of which at least fifty percent (50%) is owned by the land developer, the land developer’s original entity or the same principals who owned the land developer’s original entity shall not be considered a conveyance to a third party.

See, Chapter 276 of the Laws of 2013, § 1 at pg. 715 (emphasis added) (R., pp. 53-55).

As the district court declared in its statement of facts in its order on the motions for summary judgment, “Douglas Jayo, who is the sole shareholder of the Petitioner, was also the

sole shareholder of Jayo Construction, Inc. at the time the site improvements were made.” (R., pg. 125, ¶ 6). The district court also found that, “There are no material facts in dispute in this matter. (R., pg. 127). Thus the fact that Douglas Jayo was the sole shareholder of both the Petitioner/Appellant, Jayo Development, Inc., and the original entity, Jayo Construction, Inc. that constructed and installed the site improvements on the 41 parcels at issue on this appeal, is not at dispute. No disqualifying transfer has occurred in this case that should have denied the site improvement tax exemption to Jayo Development, Inc. for 2012.

Under the rule that tax exemptions are narrowly construed, and that they follow a “strict but reasonable” rule of statutory construction. *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. Ada County*, 123 Idaho 410, 416, 849 P.2d 83, 89 (1993), it appears that the Appellant here, Jayo Development, Inc., does qualify for the site improvement exemption under the 2013 clarifying amendment. Although there has been no transfer of title to the original developer who installed or constructed the site improvements, “Jayo Construction, Inc.,” there has been a transfer of title to real property of which at least fifty per percent (50%) is owned by “the same principals (Douglas Jayo) who owned the land developer’s original entity,” and that by the very express terms of the statute this transfer “shall not be considered a conveyance to a third party” that would disqualify that developer from claiming the site improvement exemption.

The final point is simply that as a “clarifying amendment,” the 2013 amendment to I.C. § 63-602W(4) was enacted for the purpose to stating legislative intent of how the originally

enacted 2012 site improvement tax exemption was to be interpreted. *Pearl v. Bd. of Prof'l Discipline of Idaho State Bd. of Med.*, 137 Idaho 107, 113-14, 44 P.3d 1162, 1168-69 (2002); *State v. Barnes*, 133 Idaho 378, 384, 987 P.2d 290, 296 (1999); *Stonecipher v. Stonecipher*, 131 Idaho 731, 735, 963 P.2d 1168, 1172 (1998); *State ex rel. Wright v. Headrick*, 65 Idaho 148, 156, 139 P.2d 761, 763 (1943)"); and *In re Segregation of School Dist. No. 58 from Rural High School District No. 1*, 34 Idaho 222, 200 P. 138 (1921). Thus, Jayo Development, Inc. argues that as a result of that 2013 clarifying amendment it is entitled to 2012 tax exemption under the original 2012 law.

C. The District Court Erred In Denying Jayo Development, Inc. The Site Improvement Property Tax Exemption For Tax Year 2012 By Relying Upon The State Tax Commission's Then-Lapsed Rule 620

In its argument on de novo review before the district court, the only issue raised by Ada County was that Jayo Development, Inc. was not eligible for the site improvement exemptions under the requirements of temporary Rule 620 because Jayo Development was not the developer who actually made the site improvements on the 41 parcels that are at issue. As stated in its brief submitted to the district court on its motion for summary judgment, Ada County at that time argued:

In this case, although Petitioner meets three of the four requirements of Rule 620 [footnote 3 omitted], Petitioner's Parcels are not eligible for site improvement exemptions because Petitioner did not make or cause to be made the site improvements on the Parcels. Instead, Jayo I [Jayo Construction, Inc.], not Petitioner [Jayo Development, Inc.], is the land developer that invested the necessary capital to make the site improvements on the Parcels. Petitioner, on the other hand, is merely a land developer that, through a series of conveyances,

purchased the already-improved Parcels. Consequently, Petitioner does not meet the eligibility requirements of the Site Improvement Exemption statute, and Petitioner's Parcels are not eligible for site improvements exemptions.

R. pg. 26 (bracketed references added). In the above quotation's reference to footnote 3, the text of which was omitted from the quoted text, Ada County conceded that the Appellant Jayo Development, Inc., otherwise met the other three requirements of the now-lapsed temporary Rule 620:

Petitioner meets the first, third, and fourth requirements of Rule 620—Petitioner held the Parcels on which the site improvements had been made; Petitioner held such Parcels for sale or consumption in the ordinary course of Petitioner's business; and Petitioner owned the Parcels. *See* IDAHO ADMIN. CODE R. 35.01.03.620.03.c (2012).

(R. pg. 26).

Jayo Development Inc.'s petition for de novo review by the district court was filed on April 30, 2013 (R., pg. 4), shortly after the 2013 Idaho Legislature had adjourned on April 4, 2013. The 2013 clarifying amendments to I.C. § 63-602W(4) became law on April 4, 2013 without the governor's signature, retroactive to January 1, 2013. *See*, 2013 Ida.Sess.L, Ch. 276, § 2, pg. 715. A portion of the Statement of Purpose that accompanied the 2013 clarifying amendments declared in respect to this question that:

The State Tax Commissioners voted in November 2012 to allow the Site Improvement temporary administrative rule 620T to expire. They did not approve a permanent administrative rule with the recommendation that new legislation this session would provide the needed clarification.

Statement of Purpose, H.B. 242, Sixty Second Idaho Legislation, First Session (2013) (R., pg.

59).

The single point upon which Ada County's entire objection to Jayo Development Inc.'s claim to the site improvement exemption had been addressed in the 2013 clarifying amendment enacted to I.C. 63-602W(4), as first set out in the statement of facts section of this brief.

As already argued above in Part B of this argument, this 2013 clarifying amendment should apply to the interpretation of I.C. § 63-602W(4) as enacted in 2012, and to Jayo Development, Inc.'s claim to the site improvement tax exemption for the tax year 2012. In addition, that clarifying amendment should have also eliminated any further need to rely upon the lapsed temporary Rule 620. On de novo review to the district court Jayo Development argued that based upon the legislature's clarification of the statute and rejection of the administrative rule interpretation, the district court should apply the law that was in effect at the time it rendered its decision (R., pg. 92), the district court rejected this argument stating that this rule of interpretation only applies to "adjudicative retroactivity," not legislative or regulatory retroactivity, unless expressly so declared. (R., 132-33).

Nonetheless, the Appellant Jayo Development, Inc. argues that a strict application of the rule of interpretation that the district court relied upon leads to an anomalous result in this case because at the time the district court considered the de novo appeal the 2013 clarifying amendment had already gone into effect, and temporary Rule 620 had already lapsed, such that it was error for the district court to then continue apply the already lapsed temporary Rule 620 to deny Jayo Development, Inc. the Site Improvement tax exemption on a basis the legislature had

expressly rejected.

As noted at the outset of this part of the brief, the only reason that the Respondent Ada County had continued to oppose the extension of that site improvement exemption to Jayo Development, Inc. was that it was not the actual entity developer who had made site improvements to the 41 parcels that are at issue on this appeal, which had been the predecessor entity, Jayo Construction, Inc. Ada County's sole objection was resolved by the 2013 clarifying amendment which made it clear that a disqualifying conveyance of the 41 parcels did not occur due to the fact that the same principal – Douglas Jayo – was the owner of at least fifty per percent (50%) of both the entity developer that had originally made the site improvements, Jayo Construction, Inc., and of the current owner developer entity, Jayo Development, Inc. The district court nonetheless, relied upon temporary Rule 620 as an alternative basis for denying Jayo Development, Inc., the site improvement tax exemption. (R., pp. 130-132).

On this precise question, as to whether or not a disqualifying “conveyance” of the 41 parcels had occurred that had eliminated Jayo Development, Inc.'s entitlement to the site improvement tax exemption, Jayo Development, Inc. had argued below (R., pp. 145-147) and again in Part A of this brief, that if the statute itself unambiguous then, there is no need for further interpretation by administrative rule. *City of Sun Valley v. Sun Valley Co.*, 123 Idaho 665, 667, 851 P.2d 961, 963 (1993) (“[T]he court must follow express written language of the legislature over any agency regulations.”).

The district court responded that there was no error in its analysis in declaring the statute

both unambiguous and relying upon the Tax Commission Rule 620 as an alternative grounds, reasoning that the same result – denial of the exemption – arises under either analysis (R., pg. 172, Part A).

Jayo Development's arguments in response to the district court's decision, have already been fully made above, and need not be fully reiterated here. Suffice it to summarize that the district court's interpretation of I.C. § 63-602W(4), as an unambiguous statute, were rebutted by the Idaho Legislature's 2013 clarifying amendments. The district court's interpretation can only be upheld by: (1) repudiating the clearly expressed intent of those 2013 clarifying amendments, and (2) reading language into subsection (4) of I.C. § 63-602W that finds no support in any other part of the larger statute, nor finds any support in any other interpretative aids upon which the Court is entitled to rely that would be consistent with the rules of statutory construction in respect to tax exemptions that they be narrowly construed and not extended by judicial construction. *Kimbrough v. Idaho Board of Tax Appeals*, 150 Idaho 417, 420, 247 P.3d 644, 647 (2011). The same rationale, should apply so as to prevent a court, by judicial construction, from denying a party an exemption to which the legislature has defined a class to which that party is clearly a member.

D. If Jayo Development Prevails On This Appeal, Then It Is Entitled To An Award Of Attorney Fees Under I.C. § 12-117(1)

In 2012 the Idaho Legislature amended I.C. § 12-117(1) to remove the procedural bar to an award of attorney fees in an appeal such as this case, as previously held in *Kimbrough v.*

Idaho Board of Tax Appeals, 150 Idaho 417, 247 P.3d 644 (2011), citing to *Smith v. Washington County*, 150 Idaho 388, 391, 247 P.3d 615, 618 (2010). *See*, Chapter 149 of the Laws of 2012, pp. 419-420. *See also*, Statement of Purpose S.B. 1332, Sixty-First Idaho Legislature, Second Regular Session (2012).

As now amended, the Appellant Jayo Development, Inc., as the prevailing party on this appeal is entitled to an award of attorney's fees under I.C. § 12-117(1) on the basis that Ada County, as the nonprevailing party, "acted without a reasonable basis in fact or law," for the reasons that:

1. Idaho Code § 63-602W(4) on its face, as originally enacted in 2012, did not support the exclusion of Jayo Development from the site improvement property tax exemption, but instead extended that exemption to "real property held by the land developer for sale or consumption in the ordinary course of the land developer's business."

2. The Idaho Legislature's 2013 clarifying amendment eliminated any doubt as to the original legislative intent concerning the 2012 enactment of the site improvement tax exemption by the declaration that a disqualifying conveyance did not include any transfer to another developer in which at least a 50% ownership was retained by the original principal of the developer who had actually made the site improvements in the land at issue.

3. Idaho Code § 63-602W(4), as clarified by the 2013 amendments, also eliminated any reason for any further reliance upon the lapsed tax commission rule 620 as a justification for the exclusion of Jayo Development from the site improvement property tax exemption.

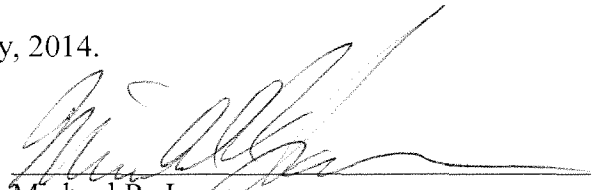
When an agency acts without supporting authority under the authorizing statute, then that agency acts “without a reasonable basis in fact or law.” *Fischer v. City of Ketchum*, 141 Idaho 349, 356, 109 P.3d 1091, 1098 (2005); and *Reardon v. City of Burley*, 140 Idaho 115, 120, 90 P.3d 340, 345 (2004). Here the plain face of the site improvement exemption statute did not support Ada County’s interpretation. When both the 2013 Idaho Legislature and the State Tax Commission promptly acted to address this misinterpretation Ada County refused to accede to either the Legislative declaration or to the Tax Commission’s decision to let Rule 620 lapse. On this basis Ada County proceeded without a reasonable basis in fact or law, which should entitle Jayo Development, Inc. to an award of costs and attorney’s fees should it prevail on this appeal.

IV.

CONCLUSION

Jayo Development, Inc. meets all of the legal and factual requirements for a site improvement property tax exemption authorized by Idaho Code § 63-602W(4). The decision of the district court denying Jayo Development, Inc. the site improvement property tax exemption for 2012 should be reversed. Jayo Development should be awarded its costs and attorney’s fees incurred in bringing this appeal.

Respectfully Submitted this 15th day of May, 2014.



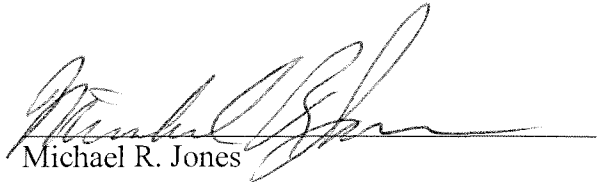
Michael R. Jones
Attorney for the Appellant
Jayo Development, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 16th day of May, 2014 two true and correct copies of the foregoing APPELLANT'S BRIEF were served upon the following:

Claire Tardiff
Nancy Werdel
Ada County Prosecuting Attorney
Ada County Courthouse
200 W. Front Street, Rm. 3191
Boise, Idaho 83702

☒ U.S. Mail
☐ Facsimile
☐ Overnight Mail
☐ Hand Delivery
☐ _____


Michael R. Jones